

FIRST REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 207

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR MATHEWSON.

Pre-filed December 26, 2002, and 1,000 copies ordered printed.

Read 2nd time January 28, 2003, and referred to the Committee on Commerce and the Environment.

Reported from the Committee February 27, 2003, with recommendation that the bill do pass.

Taken up for Perfection March 17, 2003. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

0070S.02P

AN ACT

To repeal section 407.735, RSMo, and to enact in lieu thereof one new section relating to rental vehicle damage claims.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 407.735, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 407.735, to read as follows:

407.735. 1. Any business practices utilized by car rental companies in furtherance of their business of renting vehicles to the public shall be nondeceptive, fair and shall not be unconscionable.

2. Any collision damage waiver product offered for sale to the public shall not contain any provisions that are deceptive, unfair or unconscionable. It is deceptive, unfair, and unconscionable to require a consumer to assume absolute liability for damage or loss up to the total value of a rental vehicle regardless of fault as a condition of the rental agreement, and then not include as part of any collision damage waiver product, a waiver of liability for any damage or loss which occurs as a result of the consumer's ordinary negligence, except where:

(1) The damage is caused intentionally by an authorized driver or as a result of his willful and wanton misconduct;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

(2) The damage arises out of the authorized driver's operation of the vehicle while intoxicated or under the influence of any illegal or unauthorized drug;

(3) The rental transaction is based on fraudulent information supplied by the renter;

(4) The damage arises out of the use of the vehicle while committing or otherwise engaged in a criminal act in which the automobile usage is substantially related to the nature of the criminal activity;

(5) The damage arises out of the use of the vehicle to carry persons or property for hire;

(6) The damage occurs while the vehicle is operated by a person other than an authorized driver. For the purposes of this subsection, "authorized driver" means the person to whom the vehicle is rented; the renter's spouse or other family members who are licensed drivers and satisfy the rental company's minimum age requirement; the renter's employer or co-worker if they are engaged in business activity with the person to whom the vehicle is rented, are licensed drivers, and satisfy the rental company's minimum age requirement; any person who operates the vehicle during an emergency situation or while parking the vehicle at a commercial establishment; and any person expressly listed by the rental company on the rental agreement as an authorized driver;

(7) The damage arises out of the use of the vehicle outside of the United States unless such use is specifically authorized by the rental agreement;

(8) Towing or pushing anything or if operation of the vehicle on an unpaved road has resulted in damage or loss which is a direct result of the road or driving conditions.

(9) Loss due to the theft of the rental vehicle. However, the renter shall be presumed to have no liability for any loss due to theft if (A) an authorized driver has possession of the ignition key furnished by the rental company or an authorized driver establishes that the ignition key furnished by the rental company was not in the vehicle at the time of the theft, and (B) an authorized driver files an official report of the theft with the police or other law enforcement agency within 24 hours of learning of the theft and reasonably cooperates with the rental company and the police or other law enforcement agency in providing information concerning the theft. The presumption set forth in this paragraph is a presumption affecting the burden of proof which the rental company may rebut by establishing that an authorized driver committed, or aided and abetted the commission of, the theft.

3. Any claim resulting from [physical] damage to or loss of a rental vehicle [exceeding five hundred dollars] shall be reasonably and rationally related to the actual loss incurred. The rental company shall not assert or collect any claim for physical or mechanical damage to or loss of a rental vehicle which exceeds: the actual cash value of the vehicle immediately before the loss less any proceeds from the vehicle's disposal after the loss, or the actual cost to repair the damaged vehicle including all

discounts or price reductions, whichever is less. Such claim shall be based on an estimate of damage **or repair invoice** made by an independent appraisal company [or by], an insurance company, **or a repair facility that completed or would complete the repairs.** A rental company's charge for loss of use shall not exceed a reasonable estimate of the actual income lost.

4. It is a deceptive and unfair practice for a car rental company or employee to misrepresent any element of a rental agreement transaction or to fail to disclose to consumers all material facts and restrictions applicable to the rental of a vehicle or in the sale of optional products or services. The company shall disclose the extent of the consumer's liability for the vehicle and the price for collision damage waiver and applicable mileage limitations and charges. No car rental company shall sell or offer to sell a consumer a collision damage waiver product as a part of the rental agreement unless the car rental company first provides the consumer with the following written notice:

NOTICE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A COLLISION DAMAGE WAIVER TO COVER YOUR RESPONSIBILITY FOR DAMAGE TO THE VEHICLE. BEFORE YOU DECIDE WHETHER TO PURCHASE THE COLLISION DAMAGE WAIVER PRODUCT, YOU MAY WISH TO DETERMINE WHETHER YOUR OWN VEHICLE INSURANCE AFFORDS YOU COVERAGE FOR DAMAGE TO THE RENTAL VEHICLE AND THE AMOUNT OF THE DEDUCTIBLE UNDER YOUR OWN INSURANCE COVERAGE. THE PURCHASE OF THIS COLLISION DAMAGE WAIVER PRODUCT IS NOT MANDATORY AND MAY BE DECLINED.

Such notice shall be made on the face of the rental agreement as part of the written contract, shall be set apart in bold-face type and in no smaller print than 10-point type, and shall include a space for the consumer to acknowledge his receipt of this notice.

5. Car rental companies shall not place a hold against a consumer's credit limit or charge a consumer's credit card in a deceptive or unfair manner, and without full and complete disclosure of such practice.